



COMMUNITY DEVELOPMENT DEPARTMENT

17555 Peak Avenue Morgan Hill CA 95037 (408) 779-7247 Fax (408) 779-7236
Website Address: www.morgan-hill.ca.gov

PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

JULY 25, 2006

PRESENT: Acevedo, Koepp-Baker, Benich, Davenport, Escobar, Lyle

ABSENT: None

LATE: Mueller arrived at 7:20 p.m.

STAFF: Community Development Director Molloy Previsich (CDD), Planning Manager (PM) Rowe, Senior Planner (SP) Linder, and Minutes Clerk Balagso

Chair Benich called the meeting to order at 7:00 p.m.

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Balagso certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

PLEDGE OF ALLEGIANCE

Chair Benich led the Commission in the Pledge of Allegiance.

OPPORTUNITY FOR PUBLIC COMMENT

With no members of the audience indicating a wish to address matters not on the agenda, the time for public comment was closed.

MINUTES:

JULY 11, 2006

COMMISSIONERS ACEVEDO/ESCOBAR MOTIONED TO APPROVE THE JULY 11, 2006 MINUTES AS WRITTEN.

THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, BENICH, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

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PUBLIC HEARING:

**1) ZA-06-03:CITY OF
M.H.- NON-RETAIL
COMMERCIAL
ZONING TEXT
AMENDMENT**

A request for approval of an amendment to Chapter 18.04 Definitions and the addition of Chapter 18.23 CRR, Restricted Commercial and Residential district to the Morgan Hill Municipal Code. Also requested is the amendment of the zoning designation on 57 parcels from General Commercial CG, to Restrictive Commercial Residential CRR, and 7 parcels from Administrative Office CO, to Restrictive Commercial Residential CRR. The proposed zoning amendments are consistent with the City's General Plan and the General Plan Master Environmental Impact Report will be used, no further EIR or Negative Declaration is required.

SP Linder presented the staff report and provided background on the request. She quoted the General Plan's Land Use Element which describes the Non-Retail Commercial land use designation. The proposed amendment will change the zoning designation to Non-Retail Commercial for 43 acres flanking the north and south ends of downtown. The intent of the designation is to encourage retail uses at major intersections and focus service and office uses away from major intersections. It also accommodates mixed-use development to create a market for local stores and create a neighborhood atmosphere near the downtown. In accordance with this description, staff has prepared a zoning text amendment to carry out the General Plan land use designation. This includes 20 permitted uses and 17 conditional uses. The permitted uses are for lower trip generating uses, such as professional services, social services and medical offices. Other uses include specialty type services, such as cell phone services, antique stores, appliance stores, kitchen and bath, etc. The intent of staff was to maintain flexible zoning with broad scope of uses while respecting the "non-retail" emphasis. A residential component is introduced in the General Plan. Fast food and restaurants are also included in this designation. Certain businesses, such as a veterinary hospital, would need a Conditional Use Permit, due to the noise component if there is a kennel present.

SP Linder further explained that the General Plan does not specify the density. Staff recommends 8 to 18 dwelling units per acre. Development standards are similar to what is in the CCR District at this time, which is a dwelling unit for every 2,400 sq ft. Residential use will still require a mixed-use proposal and would require approval of a PUD. Both horizontal and vertical mixed-use is permitted, but the PUD process would have to be followed. Each PUD will be considered on a case-by-case basis.

Staff did not follow CCR setback standards, but rather would like to see a transition from zero setback to a 15-foot front setback for commercial use. Adjustments to this would be allowed through the PUD process.

Staff held two workshops with property owners to discuss zoning standards. Most owners expressed the loss of retail would be an economic inhibitor and make it harder to attract tenants. Other thoughts that came out of the workshop included allowing a retail component for a certain percentage of the building, and to amend the General Commercial District to preclude uses such as professional offices and medical offices, to increase the number of potential tenants for buildings in the CRR district.

SP Linder then reported that there are proposed new zoning definitions included in the text. In conducting research for this amendment, staff discovered many definitions were missing or needed clarification.

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SP Linder stated that the final request is for a resolution for an amendment to the zoning map. She noted that the staff report calls for the designation to apply to 36 acres; however her calculations reflect 43 acres.

Chair Benich asked the Commission for questions and comments.

Commissioner Acevedo referred to the letter from the Soto family and asked staff to clarify how the proposed zoning will affect the property and if the zoning will actually be changed. SP Linder responded that the zoning is being changed by adopting the zoning text to implement the General Plan's "Non-Retail Commercial" land use designation, and the zoning map is also being amended for the affected parcels.

CDD Molloy Previsich stated that it is not an entirely new zoning change, but rather finally creating implementing zoning for the General Plan land use map adopted by City Council in 2001. Property owners and staff will now clearly understand what can be done under this designation. The change allows the zoning designation to be "in sync" with the General Plan.

Chair Benich stated that he sensed there was not an overwhelming consensus among the workshop participants/property owners as to the implementation of the zoning designation. SP Linder responded that participants were not adverse to the proposed district text, but rather did not agree with the adopted General Plan "Non-Retail Commercial" land use designation. The participants felt it is an economic inhibitor to not allow a retail component. She added that this designation was decided in 2001 by the Council.

Commissioner Koepp-Baker asked for clarification on what type of business would fit the description of "service". SP Linder responded that the business could those such as a cell phone provider, tailor or salon. Commissioner Koepp-Baker then asked if a business was to be allowed a certain percentage of the total square feet for retail sales, and how that would be determined. She provided the example of Verizon, in which a majority of the space appears to be for retail sales. Commissioner Mueller added that phone service can be purchased over the internet, but selling the accessories is the main purpose of a store front, which encourages foot traffic. SP Linder responded the Verizon store may appear to be dedicated to retail sales, but the main purpose is to sell phone service/contracts.

Chair Benich opened the public comment.

John Dossetti, 15245 Venetian Way, identified himself and stated that he believes the intent of the proposed ordinance is not to change the zoning, but to restrict the uses. He has been a long time resident of Morgan Hill and served as the president of the Chamber of Commerce in 1976. He stated that retail sales are the "life-blood" of a community. Morgan Hill will continue to grow despite of the slow growth efforts and the City should not restrict retail sales.

Mike Ackhar, 1265 S. Bascom Avenue, #110, San Jose, identified himself as the owner of property currently zoned Administrative Office, on Monterey Road directly across from the post office. He stated that he appeared before the Planning Commission and City Council several years ago requesting the zoning be changed to general retail. He advised that he is in favor of the proposed changes and commended staff on their work. Mr. Ackhar also stated that he feels Morgan Hill has an anti-development position. He added that businesses have moved either north or south of Morgan Hill because of that

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position. Stopping residential growth also stops retail growth and services from coming to town or expanding. Mr. Ackhar provided the example of the St. Louise Hospital, which is now located in Gilroy. He commented that retail giants will not come to a town of this size. The City need to encourage retail and retail development and stop economic inhibitors. Mr. Ackhar recommended approval of the proposed new zoning district and rezonings, and encouraged also allowing some amount of retail use. Continued restriction of growth and retail opportunities will limit the town's success. He concluded by stating that he is opposed to the sound wall requirement, approves of the 15-foot setback, and would also like to see more density.

Craig van Keulen spoke representing Mr. Moreno, who owns the Candy Park Shopping Center. He stated that the public noticing for this proposed ordinance and rezonings were technically correct, but feels that many property owners did not receive adequate notice at the time the General Plan designation was originally adopted in 2001, and they were not aware of the change in the designation. He stated that the General Plan description of the land use designation is confusing and doesn't specifically talk about the properties affected. He stated many of the affected properties are not located in the downtown area. He noted the language in the General Plan, which refers to "encouraging higher traffic generating retail uses". He indicated this is for big box retail uses, and the properties affected cannot accommodate that type of use.

He suggested that methods to exempt certain properties from this designation should be considered; or that up to 50% retail component be allowed; or that leased space of 1,500 or less would be exempt. He also suggested that the City implement an administrative process to resolve definitional issues that would clarify permitted uses and conditional uses. He stated that the land use designation should remain General Commercial and the General Plan amended to reflect this.

Commissioner Acevedo asked for a specific example of the type of desirable use that would be precluded from locating in the Candy Park Shopping Center.

Mr. van Keulen responded that he did not have a specific example, but did state that definitions are not as clear as they should be. He provided an example of when the definition of an kitchen design shop was not clear between City staff and his client, and he had to submit a written description of the proposed use so that staff could determine whether it was retail or service.

With no members of the audience indicating a wish to address matters not on the agenda, the time for public comment was closed.

Commissioner Lyle stated that the language in the General Plan needs to be cleaned up. For example, the term "Non-Retail Commercial" is not clear. It should read "restricted" vs. "non-retail". He added that he believes the 50% limitation on lot coverage as outlined in the General Plan is too low. The General Plan should be changed to reflect the changes specified in order to achieve the desired density of 8-18 units per acre.

Commissioner Acevedo asked about the initial intent of the Non-Retail land use designation. Commissioner Lyle recalled one reason was to encourage clustering of automotive services, and he believes that the intent was to cluster like businesses and not compete with downtown. He suggested that the Commission might explore rezoning certain areas back to retail and discuss amending the General Plan.

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Commissioner Davenport stated that the wording of the text is confusing. He is not sure at this time that there has been adequate due diligence to synchronize what is in the General Plan to the proposed zoning text.

Commissioner Escobar stated that there are three Commissioners who were not on the Commission the last time the General Plan was updated. He suggested that there might be a benefit in a discussion of the original reasons for the change in the General Plan land use designation.

PM Rowe provided background on the changes to the General Plan. He stated that one key purpose of the amendment in 2001 was to reduce trips between Tennant and Dunne to ensure that section of Monterey Road could maintain traffic capacity. He added that the Council's Community & Economic Development Committee considered the proposed new district and will be forwarding a recommendation to the City Council to allow for a small retail component. Having an ordinance in place to implement the General Plan land use designation is needed to identify allowable uses and provide certainty as far as applicable site development standards for the properties within the district. He stated it is currently difficult to determine allowable uses, as Mr. van Keulen described on behalf of his client, because there are no clear definitions of what is permitted or conditional, no density standard, and so forth.

CDD Molloy Previsich stated that this draft ordinance can be viewed as a vehicle for the debate as to whether there is merit to the land use designation. A Commission recommendation for approval would implement the existing General Plan land use policy. Whether or not it is good policy, or a suggestion that it should be reconsidered, could be a separate motion or communication from the Planning Commission, to also be forwarded to the City Council.

Chair Benich stated that the Commission has a duty to act on this, as it has been languishing for five years. There needs to be direction to the public as to what is and is not allowed.

The Commissioners noted concerns on the following:

- page numbers are not consistent
- some terminology is confusing
- language concerning mixed-use should be clarified
- horizontal mixed-use should be reconsidered

CDD Molloy Previsich advised that this district does not mandate residential development. It is a commercial district that allows mixed-use, but does not mandate it. The concept is to let market operate and determine the use and provide an incentive to have residential use. Any residential mixed-use project would be done through a PUD.

Chair Benich called for a poll of the Commissioners on the issue of horizontal mixed-use:

- Commissioner Lyle – OK, per the explanation by CDD Molloy Previsich
- Commissioner Davenport-OK
- Vice-Chair Escobar – OK
- Commissioner Acevedo – NO, would like to have a workshop to examine the reasons why this should be approved
- Commissioner Koepp-Baker-OK with horizontal mixed-use, not on entire issue
- Commissioner Mueller - NO

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Chair Benich asked the Commission if they should proceed with a recommendation on the issue.

Commissioners Acevedo and Vice-Chair Escobar raised the following concerns:

- The Commission should not vote on this issue at this time without researching the history of the designation
- Three Commissioners are at a disadvantage because they were not on the Commission in 2001 during the General Plan amendment

Commissioner Koepp-Baker indicated that she would abstain from voting on this issue.

Commissioner Mueller suggested that a workshop with the property owners would be worthwhile.

Commissioner Lyle believes that the Commission should forward the ordinance with the understanding this is not a final product, as a subsequent revision could be forwarded along with a clean-up General Plan Amendment at some time in the future.

Commissioner Davenport indicated that he would be willing to attend a workshop with property owners.

Vice-Chair Escobar suggested that the issue be forwarded to the City Council in draft form, with a request to return it to the Planning Commission with comments and guidance from the City Council.

CDD Molloy Previsich stated that forwarding this proposed district text and rezonings to Council is a way to get the matter before the City Council, and the Council could decide to keep the current designation or could direct staff and the Planning Commission to make changes. She added that this is an economic inhibitor that staff would like to address this year.

The Commission discussed how to word the resolution.

VICE-CHAIR ESCOBAR OFFERED A MOTION INCLUDING THE FOLLOWING:

1) THAT THE PLANNING COMMISSION FORWARD THE DRAFT ORDINANCE AND COMMISSION COMMENTS FOR CITY COUNCIL CONSIDERATION;

2) THAT THE PLANNING COMMISSION REQUEST COUNCIL DIRECTION AND GUIDANCE REGARDING THE "NON-RETAIL COMMERCIAL" GENERAL PLAN LAND USE DESIGNATION, AND THAT THE COUNCIL CONSIDER PARTICIPATING IN A WORKSHOP WITH THE PLANNING COMMISSION AND PROPERTY OWNERS TO REVIEW THE PROPOSED CHANGES TO THE ZONING ALONG WITH POSSIBLE CHANGES TO THE GENERAL PLAN

COMMISSIONER KOEPP-BAKER SECONDED THE MOTION, WHICH PASSED AS FOLLOWS: AYES: ACEVEDO, KOEPP-BAKER, BENICH, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

**2) POLICY
REGARDING
TENTATIVE MAP
APPROVAL PRIOR
TO AWARD OF
ALLOCATIONS**

After a five minute break Chair Benich called the meeting back to order.

A request for Planning Commission consideration of a Council policy allowing for Planning Commission approval of tentative subdivision maps which include lots which have not yet received building allocations through the Residential Development Control System.

SP Linder presented the staff report and request. Currently City staff will only process tentative maps where allotments have been awarded through the RDCS. The request before the Commission will facilitate on-going projects. Staff has developed a policy to allow for tentative map approval, but not allow for recordation of a final map unless allotments have been awarded to that particular project. The policy would only apply to projects with approved RPD master plans with substantial investment by the developer. The developer must have already built-out 50% of the units or at least 50% must be under construction. The tentative map recordation would include a provision that states the developer would not be able to record a final map until they received building allocations for those lots. The tentative map approval would expire after two years. The developer could request an extension of the tentative map through the Planning Commission. The Commission could implement any new or existing conditions at that time.

Chair Benich asked for the definition of “vested” map vs. “non-vested” map. SP Linder responded that a vested map locks in development standards and fees that are in place at the time the map is approved.

PM Rowe stated that removing the word “vesting” on a tentative map means the developer can be subject to new ordinances, policies and fees.

Vice-Chair Escobar asked SP Linder if there is specific impetus for this request and whether the developers have had the opportunity to provide input regarding this request. SP Linder responded that she received this request from the Dividend Developers. At this time, the Dividend Developers would be the only one that qualifies for this new policy. SP Linder stated that she has not shared this with the development community, but has shared a draft with the Dividend Developers. A representative from Dividend has indicated support for this policy.

The Commissioners raised the following comments:

- when would recordation of the final map would take place
- might there be a perception of customizing the process for certain developers
- might there be a perception of “setting aside” allocations for a certain developer

SP Linder responded that all developers who meet the criteria would benefit from this policy, and that the policy does not guarantee an allocation.

COMMISSIONER MUELLER OFFERED A RESOLUTION TO APPROVE THE POLICY ALLOWING FOR PLANNING COMMISSION APPROVAL OF TENTATIVE SUBDIVISION MAPS WHICH INCLUDE LOTS WHICH HAVE NOT YET RECEIVED BUILDING ALLOCATIONS THROUGH THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM. COMMISSIONER ACEVEDO SECONDED THE MOTION, WHICH PASSED AS FOLLOWS: AYES: ACEVEDO, KOEPP-BAKER, BENICH, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

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**3) RDCS
QUARTERLY
REPORT**

Quarterly review of the progress of residential projects that have been awarded building allocations under the City's Residential Development Control System.

PM Rowe presented the staff report and listed projects that are behind and are completed. The staff report included the affordability levels for 2006. He added that the recommendation is to review the report and approve by minute action a recommendation to Council to approve by minute action as well.

COMMISSIONER MUELLER OFFERED A RESOLUTION TO APPROVE THE PROGRESS REPORT OF RESIDENTIAL PROJECTS THAT HAVE BEEN AWARDED BUILDING ALLOCATIONS UNDER THE CITY'S RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AND RECOMMENDS TO CITY COUNCIL APPROVAL OF THE PROGRESS REPORT. COMMISSIONER LYLE SECONDED THE MOTION, WHICH PASSED AS FOLLOWS: AYES: ACEVEDO, KOEPP-BAKER, BENICH, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

ANNOUNCEMENTS: PM Rowe outlined a few of the items scheduled for the August 8, 2006 Commission Meeting:

- Adoption of the Historic Context Statement
- Transportation Impact Analysis for Jarvis-South Valley Developers and Jarvis-South County Housing developments, along with the related Zoning Amendment, Subdivision and Development Agreement applications.

PM Rowe then reported on the Council action at the July 19th meeting:

- Approved Zoning Amendment and Development Agreement for Church-Alcini
- Adopted the Environmental Impact Report (EIR) Addendum, and Approved Zoning Amendment and Site Review for the Foothill-American Institute of Mathematics facility
- Approved General Plan Amendment for the Adoption of the General Plan Housing Element Update

ADJOURNMENT:

Commissioner Acevedo asked about a code violation on a neon sign in the window of nail shop in the Murphy Dunne project. He then asked about the street sign at the intersection of Cochrane and Monterey - "Gateway Plaza". He added that this can cause confusion at the intersection. Commissioner Acevedo then inquired if there was a new policy in naming streets. SP Linder responded that there is no new policy in regard to naming streets. She added that this was an error that was not detected during the project approval process and that this will be researched and corrected.

Chair Benich adjourned the meeting at 8:58 p.m.

MINUTES PREPARED BY:

MARGARITA BALAGSO, Minutes Clerk